

1 MICHAEL J. PANGIA, ESQ.
D.C. Bar No. 967182
2 (Will comply with LCR IA 10-2 by Jan. 26, 2016)
THE PANGIA LAW GROUP
3 1717 N St NW, Suite 300
Washington, D.C. 20036
4 T: (202) 955-6153
F: (202) 393-1725
5 mpangia@pangialaw.com

6 **THE URBAN LAW FIRM**
MICHAEL A. URBAN, Nevada Bar No. 3875
7 SEAN W. McDONALD, Nevada Bar No. 12817
4270 S. Decatur Blvd., Suite A-9
8 Las Vegas, Nevada 89103
T: (702) 968-8087
9 F: (702) 968-8088
murban@theurbanlawfirm.com
10 smcdonald@theurbanlawfirm.com
Counsel for Plaintiff

11
12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 JASON KINZER, an individual;

15 Plaintiff,

16 vs.

17 ALLEGIANT AIR, LLC, a Nevada limited
liability company; and ALLEGIANT TRAVEL
18 CO., a Nevada corporation,

19 Defendants.
20

Case No. 2:15-cv-02306-JAD-PAL

**REPLY TO RESPONSE TO
PLAINTIFF'S MOTION TO REMAND**

21 Plaintiff, by and through counsel, hereby replies to Defendants' Opposition to the Motion
22 to Remand, stating as follows:

23 The Defendants opposed Plaintiff's Motion to Remand (ECF No. 6) on the grounds that
24 Plaintiff's complaint presents a federal question. In addition, Defendants have moved under Rule
25 12(b)(6) to dismiss Plaintiff's complaint, arguing that he has failed to state a federal question.
26 Plaintiff has filed an opposition to the motion to dismiss (ECF No. 18) articulating why the
27 issues presented in the complaint are matters of state law. Since the issues and law appear
28 common to both motions, for the sake of avoiding unnecessary repetition, it is respectfully

1 requested that Plaintiff's brief in opposition to the Rule 12(b)(6) motion to dismiss be considered
 2 for the purpose of this reply.

3 The only in-district case Plaintiff could find that is post-*Ventress v. Japan Airlines*, 747
 4 F.3d 716 (9th Cir. 2014) ("*Ventress III*"), is the case of *Yates v. Superior Air Charter*, 2015 WL
 5 4464806 (C.D. Cal. July 20, 2015). The defendant in that case presented the same arguments as
 6 the Defendants present in the instant case, insisting that the Federal Aviation Act, the Airline
 7 Deregulation Act, and the Whistleblower Protection Program ("AIR 21") each preempts a state
 8 law cause of action for wrongful termination. *Id.* at *2–3. The district court noted that in order to
 9 protect the jurisdiction of state courts, removal jurisdiction should be construed in favor of
 10 remand. *Id.* at *2. The *Yates* court noted that the Ninth Circuit in *Ventress III* held that Congress
 11 has not occupied the field of employment law in the aviation context and that the FAA does not
 12 confer upon the agency the exclusive power to regulate all employment matters involving
 13 airmen. *Id.* The *Yates* court, on the basis of *Ventress v. Japan Airlines*, 603 F.3d 676, 681 (9th
 14 Cir. 2010) ("*Ventress II*"), likewise concluded that claims of preemption under the ADA and
 15 AIR 21 fail. *Yates*, 2015 WL 4464806, at *3. The rationale should be no different here, and
 16 under the reasoning articulated in *Yates v. Superior Air Charter*, this case should be remanded to
 17 the Eighth Judicial District Court in Clark County, Nevada, where Plaintiff originally
 18 commenced his action.

19 WHEREFORE, the Plaintiff's motion for a remand should be granted and the motion to
 20 dismiss denied as moot.

21 Dated this 8th day of January, 2016.

22 MICHAEL J. PANGIA, ESQ.
 23 D.C. Bar No. 967182
 (Will comply with LCR IA 10-2 by Jan. 26, 2016)
 24 **THE PANGIA LAW GROUP**
 1717 N St NW, Suite 300
 25 Washington, D.C. 20036
 T: (202) 955-6153
 26 F: (202) 393-1725
 mpangia@pangialaw.com

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE URBAN LAW FIRM

By: /s/ Sean W. McDonald
MICHAEL A. URBAN, Nevada Bar No. 3875
SEAN W. McDONALD, Nevada Bar No. 12817
4270 S. Decatur Blvd., Suite A-9
Las Vegas, Nevada 89103
T: (702) 968-8087
F: (702) 968-8088
murban@theurbanlawfirm.com
smcdonald@theurbanlawfirm.com

Counsel for Plaintiff

64019

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 2016, I electronically filed the foregoing **REPLY TO RESPONSE TO PLAINTIFF'S MOTION TO REMAND** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Michael A Urban murban@theurbanlawfirm.com, RSchleiker@theurbanlawfirm.com, adenni@theurbanlawfirm.com, kopenbrier@theurbanlawfirm.com, nring@theurbanlawfirm.com, pcotsonis@theurbanlawfirm.com, smcdonald@theurbanlawfirm.com, vhernquist@theurbanlawfirm.com

Veronica Arechederra-Hall veronica.hall@jacksonlewis.com, LasVegasDocketing@JacksonLewis.com, janine.martin@jacksonlewis.com, karen.michelini@jacksonlewis.com

Steven C Anderson steven.anderson@jacksonlewis.com, christar@jacksonlewis.com, karen.michelini@jacksonlewis.com, lasvegasdocketing@jacksonlewis.com, santiagoe@jacksonlewis.com

Sean W. McDonald smcdonald@theurbanlawfirm.com, efiling@theurbanlawfirm.com

and I hereby certify that have mailed by United States Postal Service the document to the following non-CM/ECF participants:

[none]

/s/ Sean W. McDonald
An Employee of The Urban Law Firm

64019